

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

February 12, 2015

The Conference and Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi and Mr. Delia. Mr. Henry and Mr. Sylvester were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Applications for Review:

--CARRIED FROM JANUARY 22, 2015, WITHOUT FURTHER NOTICE:

App.#11-14: 174 Snyder Ave.BH,LLC, 174 Snyder Avenue, Block 801, Lot 50 (R-15 Zone)

Seeking a d(1) use variance for a two-story residential dwelling built in 1910 and located in the R-15 single family zone which has been operating as a four-family home. The applicant and owner of the property would like to undertake interior improvements, most notably a relocation of the existing laundry facilities from the interior living area on the second floor to the attic area above the second floor units. Other changes include new exterior windows and removal of the existing Bilco door. The existing shed and garbage enclosure will be relocated to comply with the setback requirements or removed entirely. Relief is also needed from Section 8.1.1B.1 "Expanding a nonconforming use" due to the interior expansion into the existing attic space for use as a utility room. Existing nonconforming issues are principal use; principal front-yard setback; existing "other" coverage of 22.44%, which includes the 800 sq. ft. stone driveway (allowed: 10%); and existing shed (which encroaches into the rear-yard setback).

Joseph Murray presented a summary of the application seeking a certification that the property is qualified as a pre-existing multi-family use. He stated that he has provided legal memoranda to the Board with respect to certain legal issues and Mr. Bernstein has supplied his comments as to those issues. The property consists of an existing four family structure that was built in 1910 and the question has been raised as to whether or not it was used as a multi-family home prior to the adoption of the zoning ordinance in 1937. Mr. Murray summarized the issues raised in the hearing of this application and the testimony that was provided as to the age and prior use of the structure and the condition of the interior and exterior of the property. Mr. Murray stated the opinion that the applicant has satisfied the standard of evidence that the structure does qualify as a pre-existing multi-family use and the applicant is willing to submit site plan concepts that the Board may wish to have presented as to, for example, parking and landscaping.

Mr. Bernstein noted that the tax records indicate that the building was built in 1910 but the threshold question is whether it was built as a four-family home in 1910 and whether it was used as a four-family home prior to 1937. Mr. Bernstein stated that the applicant submitted an affidavit as to the use and he advised the Board not to consider that affidavit since the person making it was not physically present for cross examination. Mr. Murray expressed an opposite opinion as to the affidavit and objected to Mr. Bernstein's instruction to the Board to disregard it.

Board Discussion

Mr. Sullivan stated his opinion that the applicant has not proved that the four-family use existed prior to 1937 and he would vote to deny the application.

Mr. Miller stated that he has lived in town for forty years and this property has always been a four-family use. There are no records on the issue of how the property was used in 1910 and 1937, but the testimony of the Planner was that the structure looks like it goes back that far.

Mr. Bernstein advised that if the Board members believe that the four-family use predated 1937 they can vote in favor of the application. He further advised that the applicant has also applied for a variance and that will be heard on February 26 if the Board decides that the use is not grandfathered.

A motion was made by Mr. Smith, seconded by Mr. Siburn, to deny Application #11-14: 174 Snyder Ave.BH,LLC, 174 Snyder Avenue, Block 801, Lot 50 (R-15 Zone) requesting certification that the property is qualified as a pre-existing multi-

family use, the Board's findings to be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 4-1 with Mr. Sullivan, Mr. Smith, Mr. Siburn and Mr. Delia voting in favor of denial and Mr. Miller voting against.

Informal Review of Submitted Applications:

App.#3-15: George Devanney, 59 Cornell Avenue, Block 1710, Lot 3 (R-15 Zone)

Proposed inground pool with paver patio surround. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for exceeding the permitted "other coverage" ratio of 10% and the "total lot coverage" ratio of 25%. Nonconforming issues are combined principal side yard setbacks; accessory setbacks for the existing shed, batting cage and large water feature; and existing fence along rear property line (which appears to be off of the subject property).

George Devanney was present with his architect, Larry Uher. Mr. Devanney stated that they had a fire at their home about 10 months ago and they decided to renovate the house. They have rebuilt the house and moved back in and now they want to put in a pool. They are over on impervious coverage, total coverage and other coverage.

In response to questions from the Board, Mr. Devanney stated that there was a pre-existing shed on the property. The existing shed is 8 x 12 and they use it for storage of sports equipment, lawn mower and other equipment. They are willing to move the shed if it is able to be moved. Mr. Uher stated that the soil removed for the pool will probably be carted off the property. Mr. Devanney noted that the property is relatively level. He further stated that they plan to do extensive landscaping in the back for privacy and to have a perimeter fence. The fence will be a black aluminum coated fence around the property. Mr. Devanney indicated the location of the generator and the filter and heat pump for the hot tub. The batting cage that is shown on the plans is seasonal. Mr. Uher will recalculate the impervious coverage to see if the batting cage was included.

It was noted that the back of the property on Yale Avenue is considered a front yard rather than a rear yard and the notice sent out by the application should include that higher setbacks are required for the front yard. It was suggested that the applicant take photos including photos of the view from the applicant's house towards the back of the property and the view standing where the pool will be located to the left and right to show what the neighbors will see. It was also suggested that the applicant bring an older photo of the property if possible showing the existing foliage.

The application was deemed complete and scheduled for hearing on February 26, 2015. The applicant will send out the required notice.

App.#2-15: Michael Lewis, 76 Hilltop Avenue, Block 3101, Lot 11 (R-20 Zone)

Seeking approval to construct an attached two-car garage. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for insufficient front-yard setback. Nonconforming issues include principal front-yard setback and principal side-yard setback.

Michael Lewis was present and stated that he wants to put a garage on his house and the setback is insufficient in front. 50' is required and 28' is proposed. The loft above the garage will be used for storage.

In response to questions from the Board, Mr. Lewis stated that some of the property is located in the flood zone but the area where the garage is proposed to be built is not. The house currently does not have a garage. Mr. Lewis also stated that he appeared before the Board in 1989 and obtained approval to add a level to the house.

A question was raised as to the setback and the impervious coverage. It was suggested that the applicant contact Tom Bocko to verify that the numbers on the plan are correct.

The application was deemed complete and scheduled for hearing on February 26, 2015. The applicant will send out the required notice.

Applications for Review:

App.#4-14: Berkeley Heights Realty, Inc., (Enrite gas station), 525 Springfield Avenue, Block 611, Lot 7 (HB-3 Zone)

Application for preliminary and final site plan approval with variances for a 44' x 48' canopy over the gas station pumps and a 4' x 6' kiosk as added accessory structures to the site. The applicant appeared before the Board in 2013 (App.#26-12: Ilya Shlakman), and a Certificate of Prior Nonconforming Status of the gasoline service station and repair garage was granted by the Board of Adjustment.

Steven Schaffer, attorney for the applicant, stated that the applicant has received two previous approvals for this property. The last approval was for certain aspects of the site plan for placement of tanks, security fence, reconnection of

electricity and installation of a pipe for drainage for the canopy. The applicant is here now for further site plan approval regarding the proposed canopy and kiosk. The proposal does not exacerbate existing conditions.

Michael Tobia, Planner, was sworn and accepted as an expert witness. Mr. Tobia stated that the application is for three improvements – a 44' x 48' canopy, a kiosk and adjustment to the free standing price sign. The proposed canopy would cover the four pumps and cars that would be parked at the pumps. They have done a lot of work to comply with the design standards. A kiosk is proposed under the canopy which would be 6' long, 4' wide and 8' high and it basically will be a shelter for the workers. The kiosk will have a stool, desk and space heater.

With regard to the price sign, Mr. Tobia stated that since it was approved and installed there have been numerous complaints about the brightness. Pursuant to input from Mike Mistretta they will replace the LED lights with old fashioned manually changed lights. The dimensions of the sign will stay the same and the Enrite logo will remain. The applicant is requesting three prices on the sign, one for regular, one for super and one for diesel. The font size will be decreased to fit the three prices where now there are two. The prices will be red for regular and super and green for diesel.

Mr. Tobia stated that the previous approval required the applicant to power wash and paint the building, resurface the parking lot, install a new fence, pavers and underground storage tanks. All of that work has been done.

Mr. Tobia stated that the variances being requested include a 10' setback of the canopy from Springfield Avenue where 12' is required. A variance is also needed because no accessory structure can be located in the front yard.

Mr. Tobia presented Exhibit A-1 – photograph showing the existing conditions with the proposed canopy, kiosk and sign added to the photo. He met with the Township Planner and the Beautification Committee and reviewed the downtown design standards and received their suggestions. The canopy has been designed to have more of a neighborhood look with a pitched roof, brown shingles and molding and trim. The trim molding is synthetic wood molding, beige in color with brick 3' up on the kiosk and on the columns. The applicant will use whatever brick is approved by Mr. Mistretta and sample will be submitted for his approval.

Mike Mistretta, Township Planner, was sworn and accepted as an expert witness. He stated that under the ordinance the canopy is an accessory structure in the front yard.

Ilya Shlakman, one of the owners of applicant, was sworn, and stated that they will repaint the bricks on the building to match the new brick on the canopy and kiosk.

In response to questions from the Board, Mr. Tobia stated that the inside of the canopy will be steel panel. The number of lights under the canopy has been reduced from 12 to 9 and that will minimize the amount of lighting under the canopy. The lights will be shut off at 10 p.m. The height under the canopy is 14' to allow for trucks and the height to the top of the canopy is 21'. Mr. Tobia indicated the location of the underground fuel pump at the far west side of the canopy. With respect to the brick on the building that has been painted over, the applicant will either strip the paint and go down to the brick or repaint it to match the brick on the canopy.

Mr. Tobia further stated that the principal building setback requirement is 12', but the applicant believes that 10' is a reasonable proposal and will offer protection for the attendant and drivers at the pumps. With respect to the height of the canopy, Mr. Tobia stated that the estimated height of the canopy is 26' while the height of the existing principal structure is about 18' requiring a variance. This was designed so that the roof would attract attention and add interest to the site. The shingle board is 4' and it can be dropped down to lower the height but he thinks the brown shingle gives a sense of balance. The proposed color of the roof is brown but that can be changed.

Open to Public

The hearing was opened to the public for comments or questions regarding Mr. Tobia's testimony.

Tom Pirone, 43 Baker Street, asked if the required setback should be 25' since this is an accessory structure. He asked if the variance being sought is for a 25' setback or a 12' setback.

Mr. Tobia said he believes the 12' setback is correct. The 25' setback applies when the building is two stories high. In his opinion 12' applies to principal buildings and accessory buildings.

Julie Lloyd, Beautification Committee, was sworn, and said the Committee likes the removal of the black color. They would prefer that the roofs match and they would prefer charcoal grey like Heritage Square. The beige color on the building is okay. On the sign they would prefer no internal lighting and they like the height of the sign at the NP station in New Providence. They would suggest gooseneck lights on the price sign.

Mr. Tobia said the sign needs to be higher in order to provide visibility for cars exiting the gas station. They will look into the gooseneck lights but they would be unusual for a price sign.

Michael Glicksman, lighting designer, was sworn, gave his educational and professional background and was accepted as an expert witness.

Mr. Glicksman stated that the initial design was more commercial and they were asked to provide a more colonial character that would fit the designs of the town. Several revisions were made to make it look colonial and not like an industrial canopy as you would see on the highway. He recently did a similar canopy in Florham Park for an Exxon station.

In response to questions from the Board, Mr. Glicksman stated that most gas stations today have canopies. The function of the canopy is to give protection to the attendant and customers while they are doing a transaction and adequate lighting makes customers feel more secure. Initially this was designed with 12 lights, 3 lights in each of the four lanes. The applicant asked that it be toned down and it was reduced to 9 fixtures and changed from a 114 watt fixture to a 88 watt fixture. There will be minimum light spillage on the property line and the light is focused downward. Lower lighting would defeat the purpose of the canopy. He has not met with Mr. Mistretta but will meet with him if necessary. The Florham Park Exxon station has a canopy that is 54' x 44' and it is located at the corner of Columbia Turnpike and Hanover Avenue.

Mr. Tobia presented Exhibit A-2 – photo of the Exxon Station in Florham Park.

In response to further questions from the Board, Mr. Glicksman stated that the amount of light at the property line will equate to a street light.

Open to Public

The hearing was opened to the public for comments or questions regarding Mr. Glicksman's testimony. There were no members of the public who had questions or comments.

Mr. Tobia discussed the variances being requested. He stated that the required front set back is 12' and 10' is proposed in order to provide sufficient room and protection under the canopy for someone inside a car. He indicated on Exhibit A-2 the closeness of the Exxon canopy to the street.

With respect to the variance for location of an accessory structure in a front yard, Mr. Tobia noted that service stations put gas pumps in the front yard because it is easier for people to get to the pumps. The existing building has been on the site for over a century and it would be a hardship to move it to the front. The location of the pumps dictates where the canopy has to go and that is in the front yard. In 2013 the Board approved the fuel pump location with respect to the side property line and the setbacks for Springfield Avenue and Plainfield Avenue. Those were all previously approved and none of the non-conforming conditions change because of the canopy and the kiosk. The free standing price sign was previously approved but is going to be changed to include the price for diesel. There will be no change in the size of the sign. Mr. Tobia further stated that the applicant is not exacerbating any existing non-conforming condition.

Mr. Tobia stated that the LED lighting is being eliminated on the sign. The lighting of the canopy will not be a detriment to what is on the street now, the residential properties behind the site are well removed from the station activity and he does not believe this will compromise the quiet enjoyment of the neighboring homes.

Mr. Tobia also stated that the site is constrained by the need for curb cuts and the need to bring a tanker on to the site. The applicant and the engineer have examined this and concluded that there is no room for street trees on either street. There is no electricity now in the road along Springfield Avenue so even if they wanted to put up a lamppost there is no electricity. Along the Plainfield Avenue side there is a 4' wide sidewalk between Plainfield Avenue and the building and no room for a street lamp. They did consider looking for a wall mounted version of the street lamp fixture that could be put on the side of the existing building. He would suggest one lamp on the Plainfield Avenue side between the windows and three gooseneck lamps along the front façade.

Mr. Mistretta stated that the minimum frontage required for this site is 250' and the existing is 100' and the minimum lot area is one acre and the existing is approximately 14,800 square feet. All parking areas must be screened from Springfield Avenue and they are not screened. The existing impervious coverage is 85% and the proposed is 100%. The existing building and the sign are on the property line and now the applicant is going to add a canopy. The chain link fence is also not permitted. Mr. Mistretta stated that it would be helpful for him to meet with the applicant's professionals.

It was suggested that the applicant provide more details on the sign and supply a sample of what the new sign will look like.

Open to Public

The hearing was opened to the public for comments or questions regarding the application.

Julie Lloyd, Beautification Committee, said they like the idea of the lights being on the building and the use of gooseneck lamps. She will provide some signage details to Mr. Tobia.

The hearing of the application was carried to the meeting of the Board scheduled on March 26, 2015 with no new notice required. A meeting of the professionals will take place. The applicant granted an extension to March 31.

Adoption of Resolution:

App.#1-15: Elyse A. Tortoriello, 120 Baker Avenue, Block 903, Lot 14 (R-15 Zone)

The proposal is to remove a detached one car garage with an attached carport and replace it with a new two car, detached garage (22' x 24' x 16' high). The existing garage and carport do not comply with accessory setback requirements; the proposed garage would be located in the same location. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for insufficient side and rear yard setbacks. (Because of the proposed 16' garage height, the 10' required setbacks for the side and rear yards would be increased to 11'.)

Existing non-conforming issues are lot area, lot width, lot depth, principal front and rear yard setbacks, existing building coverage, "other" coverage, and total lot coverage, existing shed sizes, existing shed setbacks and driveway off-set from property line. The existing carport, which would be removed, is a non-permitted accessory structure.

A motion was made by Mr. Siburn, seconded by Mr. Nappi, to adopt the above Resolution. The voice vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn and Mr. Nappi voting in favor.

Correspondence

Memorandum dated January 13, 2015, from Tom Bocko, Zoning Officer, addressed to Dan Bernstein, Esq., Bernstein & Hoffman, on the subject of zoning coverage.

Discussion took place regarding the memorandum.

Discussion

With respect to Application #25-14: 369 Springfield Avenue Associates, LLC, Mr. Mistretta advised that the applicant is requesting permission to remove five trees. The resolution says the trees were to be pruned and additional landscaping was to be supplemented at his direction. With the Board's permission the applicant wants to take trees down and put in pavers and additional landscaping between the sidewalk and detention basin and try to clean up that area so it will all get a fresh look.

A motion was made by Mr. Miller, seconded by Mr. Boyer, and carried by unanimous voice vote to permit Mike Mistretta to adjust the site plan to address the landscaping amendment. The applicant will submit a landscaping plan to address removal of five trees and replacement of five new trees and additional landscaping to Mr. Mistretta for approval.

Adoption of Minutes

January 22, 2015 Regular Meeting
January 22, 2015 Executive Session

A motion was made by Mr. Siburn, seconded by Mr. Smith, and carried by unanimous voice vote to adopt the minutes of the January 22, 2015 Regular Meeting and the January 22, 2015 Executive Session as presented.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Boyer, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:02 PM.

Regina Giardina, Secretary Pro Tem